purely commercial nature a work of necessity, in the absence of such special circumstances, ordinary work cannot be justified, under Sunday laws, on the grounds of commercial necessity, since their very object is to prohibit such activity. *Commonwealth* v. *White, supra; Arnheiter* v. *State,* 115 Ga. 572, 41 S. E. 989. The publication of newspapers on Sunday may be considered a commercial necessity, since news even a day old is practically worthless; but their publication cannot be justified on that ground; and, until the decision in the principal case, it was uniformly held that their publication and sale was illegal. *Handy* v. *Globe Pub. Co.,* 41 Minn. 188, 42 N. W. 872; *Smith* v. *Wilcox,* 24 N. Y. 353, 82 Am. Dec. 302; *Commonwealth* v. *Mathews,* 152 Pa. 166, 25 Atl. 548, 18 L. R. A. 761; *Sentinel Co.* v. *Motor Wagon Co.,* 144 Wis. 224, 128 N. W. 861. In recent years, however, public opinion has changed very much as to what activities are proper on Sunday, and the interest of the public in world events has increased to such an extent, that it seems the publication of Sunday newspapers could be justified on these grounds. See *State* v. *James, supra; Edgerton* v. *State,* 67 Ind. 588.

SURETYSHIP IN RE—PAYMENT BY CONTRACTOR TO MATERIALMAN—APPLICATION AS AGAINST OWNER—MECHANICS' LIEN.—The defendant, owner of a building in process of construction, made a payment to a contractor on estimates. Out of this payment, the contractor made a payment to a materialman, who held unpaid accounts against the contractor for materials furnished for several buildings, including the defendant's. The contractor not directing the application of the payment, the materialman, without knowledge of the source of the funds, applied them upon the contractor's account for materials furnished for another building; and brought an action to foreclose a mechanic's lien on the defendant's building for the whole amount of materials furnished for it. *Held,* the payment made by the contractor must be credited to the defendant's account. *Sioux City Foundry & Mfg. Co.* v. *Merten et al.* (Iowa), 156 N. W. 367.

Independently of special statute, the owner is under no personal obligation to protect the materialman. *Schrieber* v. *Bank,* 99 Va. 257, 38 S. E. 134. Thus, the general contractor being personally liable to the materialman on his contract, and the owner not being personally liable, but liability attaching to his building alone, a case is presented where the property of one person is standing surety for the personal obligation of another, creating the relation of suretyship *in re. Hill* v. *Witmer,* 2 Phila. (Pa.) 72; *Lowry* v. *McKinney,* 68 Pa. St. 294; *Bank of Albion* v. *Burns,* 46 N. Y. 170. As such surety, the owner is entitled to the benefit of the rules prohibiting all dealings of the creditor with the principal debtor to his prejudice. *Bank of Albion* v. *Burns, supra.*

The general rule is well settled that where a debtor makes a voluntary payment to his creditor, who has several claims against him, and fails to direct application of the payment on any particular claim, the creditor has the right to apply the payment to any of the claims which he has against the debtor. *North* v. *LaFlesh,* 73 Wis. 520, 41 N. W. 633; *Austin* v. *Southern Home Bldg. & Loan Assn.,* 122 Ga. 439, 50 S. E. 382; *Gay* v. *Gay,* 5 All. (Mass.), 157. But some courts make an exception

where the money was received by the debtor from a third person whose property would be liable for the debt, in case the money was not applied upon such third person's liability, even though the creditor has no knowledge of the source of the funds. *Crane* v. *Keck,* 35 Neb. 683, 53 N. W. 606; *Williams* v. *Wellingham-Tift Lumber Co.,* 5 Ga. App. 533, 63 S. E. 584. There is, however, considerable authority sustaining the contrary view, holding that where the creditor has no knowledge that the money was furnished by the owner, no such exception exists. *Gantner* v. *Kemper,* 58 Mo. 567; *Union Trust Co.* v. *Casserly,* 127 Mich. 183, 86 N. W. 545; *Pipkorn* v. *Evangelical Society,* 144 Wis. 501, 129 N. W. 516. Even where the owner had completely paid the general contractor for his building, when the equities of the case most strongly favored him, the exception has not been recognized. *Thacher* v. *Bullock Lumber Co.,* 140 Ky. 463, 131 S. W. 271. In some jurisdictions there is an extreme view, recognizing no exception even where the creditor had actual knowledge that the payment made him was received by the debtor from the owner, whose property was liable as surety for the debt. Under this rule it is considered the duty of the owner to see that application of the payment is made to his account, or give notice himself that it should be so made. *Sheppard* v. *Steele,* 43 N. Y. 52, 3 Am. Rep. 660; *Jefferson* v. *Church of St. Mathew,* 41 Minn. 392, 43 N. W. 74.

Where there is no claim existing against the owner by the materialman, at the time of payment by the contractor, the application to the contractor's other debts will not be disturbed. *Brigham* v. *DeWald,* 7 Ind. App. 115, 34 N. E. 498.

THEATRES AND SHOWS—RIGHT TO ADMISSION—RIGHT OF DRAMATIC CRITIC. —A statute provided that all persons should be entitled to full and equal accommodations in places of amusement, and that no manager or owner of any such place should deny any of its advantages or privileges to any person on account of his race, color or creed. The plaintiff, a dramatic critic, was excluded because of unfriendly, though proper and legitimate, criticisms which he had published. *Held,* the plaintiff may legally be excluded. *Woollcott* v. *Shubert* (N. Y.), 111 N. E. 829.

The operation of a theatre is not a business affected with a public interest; and there is no obligation resting upon a theatre manager to admit all who may apply, but he may decide who shall enter and who shall be excluded, under the right which any private person has to control his property. *Horney* v. *Nixon,* 213 Pa. 20, 61 Atl. 1088, 110 Am. St. Rep. 520, 1 L. R. A. (N. S.) 1184; *People ex rel. Burnham* v. *Flynn,* 189 N. Y. 180, 82 N. E. 169, 12 Ann. Cas. 420. When the question of the right inhering in the holder of a theatre ticket first arose, it was held that the sale of the ticket created an irrevocable license. *Taylor* v. *Waters,* 7 Taunt. 373. But this doctrine was criticised and overruled by a later case, holding that the license was revocable. *Wood* v. *Leadbitter,* 13 Mee. & W. 838. The doctrine of the latter case was accepted by the early cases in this country. *McCrea* v. *Marsh,* 12 Gray (Mass.) 211, 71 Am. Dec. 744; *Burton* v. *Scherpf,* 1 Allen (Mass.) 133, 79 Am. Dec. 717. And they have been uniformly followed by the later decisions.